DOUGLAS E. NOLAND

IBLA 94-227 Decided January 6, 1997

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring 26 mining claims abandoned and void for failure to pay the annual rental fees required by statute. CMC 202302, et al.

Affirmed.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally

Responsibility for satisfying the rental fee requirement of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1374, 1378-79 (1992), resides with the owner of unpatented mining claims, as Congress has mandated that failure to make the annual payment of the claim rental fee required by the Act conclusively constitutes abandonment of the unpatented mining claims. In the absence of a small miner exemption from the rental fee requirement, failure to pay the fee in accordance with the Act and regulations results in a conclusive presumption of abandonment.

APPEARANCES: Douglas E. Noland, pro se; Lowell L. Madsen, Esq., Assistant Regional Solicitor, Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Douglas E. Noland has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated November 22, 1993, declaring 26 mining claims abandoned and void for failure to pay annual rental fees for the claims. 1/ The decision stated that the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102-381, 106 Stat. 1374 (1992), required payment of a rental

1/ Enclosure 1, attached to the decision, lists the following mining claims: BLM serial numbers CMC-202302-15 (High Grade Nos. 1-7, 25-31), and CMC-202316-27 (Silver Falls Nos. 1-12). For each claim, the column labelled "Rental Fee Year(s) Missing" indicated 1993-1994.

fee in the amount of $100 per claim for the 1993 and 1994 assessment years ($200 per claim for both years), in the absence of a certification of exemption from payment of rental fees by the deadline of August 31, 1993. Since BLM records did not show receipt of either rental fees or a request for a small miner exemption as of August 31, 1993, BLM declared the mining claims abandoned and void.

In his statement of reasons for appeal, appellant challenges the Act itself, asserting that it is unconstitutional in several respects. Appellant contends that imposition of the rental fee gives rise to an unconstitutional taking of his property in the form of his mining claims without due process of law. Appellant also argues that the United States lacks jurisdiction over or ownership of the public lands on which the claims were located.

Counsel for BLM has filed an answer in this case. It is pointed out by BLM that it is clear from the record that appellant failed to comply with the Act by paying the required rental fee with respect to the mining claims by August 31, 1993, and, hence, under the terms of the Act, the claims were properly found to be abandoned and void. Further, while noting that this Board has no authority to rule on the constitutionality of an act of Congress, BLM points out that in reviewing statutory mining claim recordation provisions the Supreme Court has held that Congress may condition the continued retention of unpatented mining claims on "performance of certain affirmative duties." United States v. Locke, 471 U.S. 84, 104 (1985).

As a threshold matter, we find that appellant's argument regarding the lack of jurisdiction of Congress over the public lands is inconsistent with his location of mining claims under the Mining Law of 1872 which, by definition, applies to location of mining claims on the "lands belonging to the United States." See 30 U.S.C. § 22 (1994). As pointed out by BLM on appeal, this Board has long recognized that it has no authority to declare an act of Congress unconstitutional. See, e.g., William B. Wray, 129 IBLA 173, 176 (1994); Amerada Hess Corp., 128 IBLA 94, 98 (1993). With respect to the jurisdiction of Congress over the public lands, however, we note that the property clause of the United States Constitution gives Congress the authority to make all "needful" rules and regulations regarding the property of the United States. U.S. Const. art. IV, § 3, cl. 2. The power of Congress over the public lands has been held to be very broad. See Kleppe v. New Mexico, 426 U.S. 529, 539 (1976).

[1] The decision in this appeal is controlled by provisions of statute. On October 5, 1992, Congress enacted the Act, P.L. 102-381, 106 Stat. 1374, which required:

> [F]or each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the

> filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of $100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

106 Stat. at 1378. The Act contains a substantially identical provision requiring claimants to pay, on or before August 31, 1993, a $100 rental fee for the assessment year ending September 1, 1994. Id. Thus, in the absence of filing a qualifying certificate of exemption (small-miner exemption) claimants were required to pay a total of $200 in rental fees for mining claims by August 31, 1993. 43 CFR 3833.1-5(b) (1993). 2/ Congress also provided that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant * * *." Id. at 1379; 43 CFR 3833.0-3(e), 3833.4(a)(2) (1993). It is clear from the record in this case that appellant did not pay the rental fee. When a claimant fails to qualify for a small miner exemption from the rental fee requirement, failure to pay the rental fee in accordance with the Act and the regulations results in a conclusive presumption of abandonment. William B. Wray, supra at 175; Lee H. & Goldie E. Rice, 128 IBLA 137, 141 (1994). Accordingly, BLM properly declared the mining claims abandoned and void.

With respect to appellant's challenge to the constitutionality of the statute as applied to his mining claims, it has been held that "Regulation of property rights does not 'take' private property when an individual's reasonable, investment-backed expectations can continue to be realized as long as he complies with reasonable regulatory restrictions the legislature has imposed." United States v. Locke, supra at 107 (citations omitted). In accordance with this principle, the constitutionality of the Act of October 5, 1992, has also been upheld in court against fifth amendment challenge. Kunkes v. United States, 32 Fed. Cl. 249 (Ct. Fed. Cl. 1994), aff'd, 78 F.3d 1549 (Fed. Cir. 1996). Finding "Congress retains the affirmative power to change the conditions for continued ownership of mineral claims, assuming that power is reasonably exercised," the court further held that:

> Claimholders have always been subject to some ongoing proof of their interest in developing the mineral resources of their

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2/ The only exception provided from this annual rental requirement is the "small miner" exemption, available to claimants holding 10 or fewer claims on Federal lands. 106 Stat. 1378-1379; 43 CFR 3833.1-5(d), 3833.1-6, and 3833.1-7 (1993); see William B. Wray, supra. The record shows that appellant held more than 10 claims at the time of the Aug. 31, 1993, filing deadline.

> claims. Although the Act [of October 5, 1992,] raised the ante, it did so in a way that cannot be considered substantially different in kind or degree from what had previously been required. It was plainly motivated by the same purpose, namely elimination of stale or worthless claims. H.R.Rep. No. 626, 102nd Cong., 2d Sess. 14 (1992). The Supreme Court has held that this is a legitimate governmental interest. Locke, 471 U.S. at 105-06. [Additional citations omitted.]

32 Fed. Cl. at 254-55. On appeal, the court found:

> It is entirely reasonable for Congress to require a $100 per claim fee in order to assess whether the claim holders believe that the value of the minerals in their claims is sufficiently great to warrant such a payment; and whether claim holders have the resources and desire to develop these claims. If the claims are not valued by the claim holders sufficiently to warrant a $100 fee payment, then the claim holders' decision not to pay the fee eliminates an unnecessary encumbrance on public lands and frees the land for a more valued use.

78 F.3d at 1556. Hence, appellant's constitutional argument lacks foundation.

We note that appellant has made many diverse arguments, some less germane than others, in support of his position on appeal. To the extent that other arguments raised by appellant have not been specifically addressed herein, they have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Colorado State Office is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

John H. Kelly
Administrative Judge